

MAR 12 1977

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-884

ROBERT B. MARTIN,

Petitioner,

vs.

RICHARD J. ELROD,

Respondent.

(On Petition For A Writ Of Certiorari To The
Appellate Court Of Illinois, First District)

BRIEF OF RESPONDENT IN OPPOSITION

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BRIEF OF RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED FOR REVIEW

1. Whether petitioner's right to cross-examine witnesses was unduly restricted.
2. Whether petitioner failed to sustain the burden of proof that he was not a fugitive from justice, and therefore his habeas corpus petition was properly denied.

STATEMENT OF THE CASE

Robert B. Martin, the petitioner herein, was arrested in Illinois in May of 1974, under authority of a Governor's warrant issued upon demand of the State of California. Petitioner was charged with having committed the crimes of armed robbery and kidnapping in that state on April 2, 1973.

Petitioner challenged the validity of his detention by filing a petition for writ of habeas corpus in the Circuit Court of Cook County, Illinois on July 22, 1974, contending in part that he was not in California on April 2, 1973. At the hearing on the petition petitioner called five witnesses and also testified on his own behalf. The substance of this testimony was that petitioner was in Illinois on April 2, 1973. The respondent called on its behalf Louise Norton of San Clemente, California, petitioner's former mother-in-law. Mrs. Norton testified that petitioner stayed at her home on March 30, March 31, April 1, and April 2, 1973. Mrs. Norton further testified that she drove petitioner to the bus station in Newport, California on the morning of April 2, 1973, and stated that their parting was friendly. At the conclusion of the hearing, the petition for writ of habeas corpus was quashed, and petitioner appealed.

The Illinois Appellate Court for the First District of Illinois affirmed the dismissal of the petition (*People ex rel. Martin v. Elrod*, 36 Ill. App. 3d 952, 344 N.E.2d 714 (1976), and the Supreme Court of Illinois denied leave to appeal.

ARGUMENT FOR DENIAL OF THE WRIT

I.

PETITIONER'S RIGHT TO CROSS-EXAMINE WITNESSES WAS NOT UNDULY RESTRICTED.

Petitioner contends that he was denied his constitutional right of confrontation when the trial court allegedly prevented petitioner from showing bias on the part of Mrs. Norton, respondent's witness. Respondent submits that the trial court allowed testimony going directly to the issue of the witness' possible bias, from which inferences favorable to petitioner's position could have been drawn, and that the responses excluded by the court (cited at page 5 of the instant petition) did not unduly restrict cross-examination.

Perhaps if the trial excerpts cited by petitioner on page 5 of his petition constituted his only effort to reach the issue of Mrs. Norton's possible bias, there would be a constitutional error. The record, however, discloses that this is not the case. In approximately 13 pages of cross-examination testimony the record reveals that petitioner was allowed to ask, and the witness allowed to answer several other questions bearing directly on any bias she may have had against petitioner. Early in the direct examination it was established that Mrs. Norton was petitioner's former mother-in-law. (Tr. 10)¹ Moreover, in the same series of questions complained of by petitioner, the witness' testimony established that she had custody of petitioner's son, the fact upon which petitioner seeks to establish bias. In addition, the record reveals that petitioner's ex-wife testified in his behalf that her mother, Mrs. Norton, would "do anything to keep him (petitioner's son) in her custody," (Tr. 52) and that she

¹ "Tr." refers to trial court transcript.

and petitioner had discussed regaining custody of their son from her mother.

Although respondent was entitled to reasonable cross-examination for the purpose of impeaching or discrediting Mrs. Norton's testimony, the extent of cross-examination rests in the sound discretion of the trial judge. It is only where there is an abuse of discretion resulting in manifest prejudice to the defendant that a reviewing court will interfere. Respondent maintains that the record in the instant case shows no such prejudice to petitioner, nor was he denied his right to cross-examine or confront the witness. There was sufficient testimony before the court on the subject of Mrs. Norton's possible bias.

Petitioner's reliance on *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1005 (1974) is misplaced. In *Davis*, as here, defense counsel was allowed to ask whether the witness was biased. This Court found that "counsel was unable to make a record from which to argue *why* Green might have been biased or otherwise lacked the degree of impartiality expected . . ." *Davis v. Alaska*, *supra* at 318. However, in the case at bar, unlike *Davis*, the record discloses ample testimony from which the trier of fact "could approximately draw inferences relating to the reliability of the witness." *Davis v. Alaska*, *supra* at 318.

Petitioner was not foreclosed from all inquiry into the possible bias of the State's witness, nor was he prevented from making a record from which inferences supporting a theory of bias could be drawn. Information concerning possible bias was before the court for its determination as to the weight such information should be given in deciding whether petitioner was in California at the time of the alleged offense.

From the foregoing it is clear that petitioner's right to cross-examination was not unduly restricted.

II.

PETITIONER FAILED TO SUSTAIN THE BURDEN OF PROOF THAT HE WAS NOT A FUGITIVE FROM JUSTICE, AND HIS HABEAS CORPUS PETITION WAS PROPERLY DENIED.

A person arrested on an extradition warrant is *prima facie* in lawful custody, and in a habeas corpus proceeding he must overcome this presumption. *State of South Carolina v. Bailey*, 289 U.S. 412, 53 S. Ct. 667 (1933). In the instant case, petitioner alleged that he was not a fugitive from justice because he was not in the demanding state on the date of the crime. The evidence presented on this point was contradictory, petitioner's witnesses stating that he was in Illinois on the date the crime occurred, and the state's witness testifying that petitioner was in California, the demanding state, on that date. As this Court stated in *Munsey v. Clough*, 196 U.S. 364, 25 S. Ct. 282, 285 (1905), "But the court will not discharge a defendant arrested under the governor's warrant where there is merely contradictory evidence on the subject of presence in or absence from the state, as habeas corpus is not the proper proceeding to try the question of alibi . . ." Moreover, the burden of proof resting upon the habeas petitioner was enunciated in *State of South Carolina v. Bailey*, 289 U.S. 412, 422, 53 S. Ct. 667, 671 (1933). "Stated otherwise, he should not have been released unless it appeared beyond a reasonable doubt that he was without the [demanding state] when the alleged offense was committed . . ." The policy reasons supporting *Bailey* and *Munsey* are as valid today as when those cases were decided. Inasmuch as there was contradictory evidence concerning petitioner's presence in California, the state courts were correct in

denying petitioner's petition for writ of habeas corpus and in finding that petitioner had failed to sustain the required burden of proof.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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March 11, 1977